Where land is devised to several, and afterwards the testator for valuable and not a nominal consideration, ($30) conveys sixty acres of it to one of the devisees, this is not a satisfaction of the devise. *Brown's Estate.*

Where land is devised to be sold and divided among certain named persons, this is a specific legacy, and no part of it can be appropriated to make up the deficiency of any other bequest. *Ibid.*

LEGAL MISCELLANY.

Several notices of books, and a good deal of matter prepared for this head, have been crowded out by the length of the abstracts of decisions in Pennsylvania, which were of too immediate importance and value to be postponed for mere symmetry.

—— We have been favored by a distinguished member of the Philadelphia bar, with the following observations on the recent decision of Judge Paine, which has created so much feeling in the Southern States. We are obliged to defer some remarks of our own on this important subject, till a future number.

"The decision of Judge Paine setting free the eight slaves found in the port of New York, on their way with their master from Virginia to Texas, must fill the country with political indignation and professional disgust. With the first we have nothing to do, and on the second, have a brief word only to say. This happy decision is made to turn upon *Somerset's Case* and like European authority; to which the learned Judge adds that the New York Statutes are to the same effect. These authorities of the common law of England and of the law of nature and nations, says he, show that there can be no property in slaves, except by artificial enactment; and therefore, there being no artificial enactment to warrant it, even for the purpose of transit through their territory, property in slaves cannot exist in New York. When they are there they are free; and if they are brought up on *habeas corpus*, they must be discharged. This is the decision; and it is the most egregious example of deciding the cause and missing the point, and when too that point was of surpassing magnitude and importance, which has ever come under our notice. *Somerset's Case*, [we select that because of the learned judge's citations, it is the best known, and because it illustrates his whole argument and doctrine,] was a decision upon what is called the *policy* of the law. It afforded a fair opening for

an old fox like Mansfield to make a point, and say something, and he hit it off very well. We have no fault to find with him. He decided his case just as it would have been decided any where else, in or out of England, where domestic slavery had no existence. Whether the *Assiento* treaty was at that day in force or not, we do not recollect; and if it were, his lordship had only to say that policy for England was English policy, but policy for the Colonies was any thing at all; that it might be very well to send negroes to their friends in the Carolinas and Georgia, but to let them come and pollute the carpets of Westminster Hall, was quite another matter. But does not Judge Paine see that Lord Mansfield, with his common law and his garnish, decided in *Somerset's Case* neither more nor less than exactly this, that the policy of England was against slavery? If the learned Judge will penetrate a little further into English law books, he will find scores of cases ruled on policy, the policy of denying the use of arms to the people, the policy of fortifying the established church, of strengthening the aristocracy, of backing the landed interest against the merchants and shopkeepers, of helping the press-gang, of encouraging the strong and discouraging the weak, and a hundred other policies, about which we have no more to say than this, that they are not policies of our Republic. Now let us inform Judge Paine of that of which he seems to be profoundly uninformed, namely, that just as the policy of England is against slavery, so the policy of the United States is the other way, and that the constitution of the United States sanctions the possession of hundreds of millions of property held accordingly; and that his quoting Somerset's case, and the laws of nations, and then coolly adding, *there is an end of the matter*, when the question before him is upon the right of an American, not an Englishman, to his slave, is not a whit more absurd than it would be if his case were one of some enterprising clergyman who out of the litter of his neighbour's sow, seized the tenth pig, to look into the English tithe cases for precedents to justify the rape, and then saying there is an end of that matter, adjudge the pig to the parson. In England they have tithes, and no slaves. In the United States we have slaves and no tithes. What then is as plain as a pike staff is that the whole question in this cause, and a great and broad one it is, is whether, in the instance of the transit of slaves from one slaveholding State of this Union, to another slaveholding State, through a non-slaveholding State, the policy of the last is alone to govern, and that of the other two states and the federal government to have no influence at all upon the decision. A policy, not of honor or shame, or of

political effect, but a policy of necessity and self-preservation, a policy of union or disunion; for if the Union is to be preserved, it is to be by making the States, what we are in the habit of calling them, sister States, and not by setting them to clapper-claw and plunder one another. There is the question. We pretend not to its solution, and insist only that it is in the case in all its magnitude. To deny its existence, is like denying the existence of space or time. But oh! the bliss of ignorance! Mr. Justice Paine has no more idea of his case, no more conception or comprehension of its true proportions, than Mr. Jourdain had that he was talking prose, or than a clown has of the atmosphere he is inhaling. There is the precedent, quoth he; Lord Mansfield has settled the question; and away goes the Constitution of the United States, puffed over in compliment to my Lord Mansfield and a precedent! A precedent which, we repeat, being a decision that the policy of England is against negro slavery, has as much bearing upon the question before the Judge, which is a point of policy under the Constitution of the United States, as any English tithe case would have if the question were upon paying a New York clergyman his quarter's salary. Would there could be a rebellion of the American lawyers, to shake off the yoke of English authority! Then such provincialism and cow feathers as this, which would abandon the Constitution under which we live, and our country, still our country, whether its policy be right or wrong, to creep behind a London folio, the profession would learn at last to be ashamed of, as the people learned to be ashamed of old George the Third."

—— In a recent case in England, (*Stronghill* v. *Anstey*, 16 Jur., 1671,) the much discussed question as to how far a power of sale implies a power to mortgage, was decided by Lord St. Leonard, in favor of the position formerly assumed by him in his treatise on Powers, (1 Sugden on Powers, 7th Ed., 513.) The following is declared to be the result of the authorities. "Generally speaking, a power of sale out and out for a purpose, or with an object beyond the raising a particular charge, does not authorize a mortgage; but where it is for raising a particular charge, and then the estate, it is settled or devised subject to that charge, then it may be proper under the circumstances, to raise the money by mortgage."—See upon this case, two able articles in the London Law Magazine for November, 1852, (pp. 281, 301.)